

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
ROBERT SULLIVAN )  
d.b.a. CROWN CEDAR PRODUCTS, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 860

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the consolidated appeals of a \$250 civil penalty for an alleged open burning violation of respondent's Regulation I, and a \$250 civil penalty for an alleged smoke emission violation of respondent's Regulation I having come on regularly for a formal hearing before Board members Chris Smith and Walt Woodward on the 5th day of September, 1975, at Seattle, Washington, and appellant Robert Sullivan appearing through his wife, Janet Sullivan, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin, and the Board having considered the sworn testimony, exhibits, records and

1 files herein and having entered on the 21st day of October, 1975, its  
2 proposed Findings of Fact, Conclusions of Law and Order, and the Board  
3 having served said proposed Findings, Conclusions and Order upon all  
4 parties herein by certified mail, return receipt requested and twenty  
5 days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,  
7 Conclusions and Order and the Board being fully advised in the premises;  
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
10 Findings of Fact, Conclusions of Law and Order dated the 21st day of  
11 October, 1975, and incorporated by this reference herein and attached  
12 hereto as Exhibit A, are adopted and hereby entered as the Board's  
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 20th day of November, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 Chris Smith  
17 CHRIS SMITH, Chairman

18 Walt Woodward  
19 WALT WOODWARD, Member

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

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FINDINGS OF FACT,  
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This matter, the consolidated appeals of a \$250 civil penalty for an alleged open burning violation of respondent's Regulation I, and a \$250 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on September 5, 1975.

Appellant was represented by his wife, Janet Sullivan. Respondent appeared through Keith D. McGoffin. Jennifer Rowland, Olympia court

EXHIBIT A

1 reporter, recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were admitted.

3 From testimony heard and exhibits examined, the Pollution Control  
4 Hearings Board makes these

5 FINDINGS OF FACT

6 I.

7 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d  
8 Ex. Sess. (RCW 43.21B.260), has filed with this Board a certified copy  
9 of its Regulation I containing respondent's regulations and amendments  
10 thereto.

11 II.

12 Section 9.02(d)(3) of respondent's Regulation I makes it unlawful  
13 to cause an outdoor fire, which is not for residential or land-clearing  
14 purposes, without having obtained a permit for said fire from respondent.  
15 Section 9.03(c)(2) makes it unlawful to cause or allow the emission for  
16 more than three minutes in any one hour of an air contaminant from a  
17 source installed after April 1, 1973 which contaminant is greater than  
18 20 percent opacity. Section 3.29 authorizes respondent to levy a civil  
19 penalty of not more than \$250 for any violation of Regulation I.

20 III.

21 Appellant owns and operates a cedar mill at Route 2, Box 504,  
22 North Bend, King County. Since September 7, 1972, respondent made  
23 numerous contacts with appellant regarding wood waste burning in violation  
24 of respondent's Regulation I. These contacts included many indications by  
25 appellant that he would construct and utilize an approved burner for the  
26 disposal of wood waste. Until April, 1975, these contacts included nin

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 notices of violation, eight of which resulted in no civil penalties.

2 IV.

3 On April 22, 1975, two inspectors on respondent's staff witnessed  
4 open burning of wood waste at appellant's mill. They ascertained that  
5 respondent, on April 11, 1975, had denied appellant's request for burning  
6 of wood waste on the grounds that appellant did not have an approved wood  
7 waste burner. The two inspectors also saw smoke of 100 percent opacity  
8 arising for at least seven consecutive minutes from the fire.

9 In connection with the open fire, respondent served on appellant  
10 Notice of Violation No. 11027, citing Section 9.02, and Notice of Civil  
11 Penalty No. 2011 in the sum of \$250. In connection with the smoke  
12 emission, respondent served on appellant Notice of Violation No. 11028,  
13 citing Section 9.03, and Notice of Civil Penalty No. 2012 in the sum of  
14 \$250.

15 The civil penalties are the subjects of the appeals.

16 V.

17 Appellant has had financial difficulties, caused chiefly by a total  
18 destruction of the mill by fire in 1972.

19 VI.

20 On June 19, 1975, pursuant to an application by appellant, respondent's  
21 Board of Directors granted appellant a variance for open burning of wood  
22 waste until November 30, 1975. The variance (Resolution No. 310) was  
23 granted to permit applicant to continue operation of the mill while  
24 constructing an approved wood waste burner.

25 VII.

26 Appellant's contemplated approved wood waste burner will cost in

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 | excess of \$13,000.

2 | VIII.

3 | Any Conclusion of Law hereinafter stated which is deemed to be a  
4 | Finding of Fact is adopted herewith as same.

5 | From these facts, the Pollution Control Hearings Board comes to these

6 | CONCLUSIONS OF LAW

7 | I.

8 | Appellant was in violation of respondent's Regulation I as cited  
9 | in Notices of Violation Nos. 11027 and 11028.

10 | II.

11 | In view of respondent's long record of tolerance and patience with  
12 | appellant's numerous open burning violations (Exhibit R-1), Notices of  
13 | Civil Penalty Nos. 2011 and 2012, although both at the maximum allowable  
14 | amount, are reasonable.

15 | III.

16 | Respondent's Board of Directors, by virtue of Resolution No. 310,  
17 | has shown further empathy with appellant's financial problems. This  
18 | Board, in these instant matters, joins in that effort to give appellant  
19 | an opportunity to install an approved wood waste burner and, thus,  
20 | achieve compliance with respondent's clean air regulations. Payment of  
21 | the penalties should be suspended permanently on condition that appellant  
22 | install an approved wood waste burner pursuant to the terms of Resolution  
23 | No. 310 or any extensions thereof which respondent may grant.

24 | IV.

25 | Any Finding of Fact herein which is deemed to be a Conclusion of  
26 | Law is adopted herewith as same.

27 | FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Therefore, the Pollution Control Hearings Board issues this

2 ORDER

3 The appeals are denied; Notices of Civil Penalty Nos. 2011 and 2012  
4 are sustained in the amounts of \$250 each, but payment of both penalties  
5 is suspended permanently on condition that appellant install an approved  
6 wood waste burner pursuant to the terms of respondent's Resolution  
7 No. 310, or any extension thereof.

8 DONE at Lacey, Washington, this 21<sup>st</sup> day of October, 1975.

9 POLLUTION CONTROL HEARINGS BOARD

10 Chris Smith  
11 CHRIS SMITH, Chairman

12 Walt Woodward  
13 WALT WOODWARD, Member

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